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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN Co

GERALD C. MANN
ATTORNEY GENERAL

March 30, 1939

Mr. Tom L. Hartley
Criminal District Attorney
Edinburg, Texas

Dear Sir:

Opinion No. 0-507 ✓
Re: Whether Commissioners' Court author-
ized to pay ex-tax collector \$350.00
to wind up the affairs of office.

With further reference to your letter of
March 8th enclosing written certified copy of an order
of the Commissioners' Court of Hidalgo County, kindly
be advised that this Department has considered your
request for an opinion as contained therein as to whe-
ther or not the Commissioners' Court was within its
discretionary power in passing an order reading sub-
stantially as follows:

"January 5, 1939 - Upon motion duly made
by Commissioner Hester, seconded by Commis-
sioner Melton, that J. J. Oliver be allowed \$350.00
for men to check out and make final reports of
tax collector's office. Motion carried unani-
mously."

We have determined the population of Hidalgo
County to be 77,004, according to the 1930 Federal census
and assume that the tax collector is paid under the Offi-
cers' Salary Bill.

The statutes make it the duty of various offi-
cers, including the tax collector, to make the final re-
port as required by law. We find the following statutes
providing for such reports:

Article 7260, as amended, para. No. 4, reads:

"The tax collector shall pay over to the
State Treasurer all balances in his hands be-

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longing to the State, and finally adjust and settle his account with the Comptroller on or before the 1st day of May of each year, and to enable him to do so, the Commissioners' Court shall convene on or before the 3rd Monday in April for the purpose of examining and approving his final settlement papers."

Article 7261, as amended, para. No. 6 reads:

"The tax collector shall finally adjust and settle his account with the Commissioners' Court for the county taxes collected, at the same time and in the manner as is provided in the foregoing article, in his settlement with the State."

Under Article 3897, each tax collector shall make a sworn statement, at the close of each fiscal year (December 31st), filing a copy of same with county auditor or otherwise with the Commissioners' Court showing the amount of all fees, commissions and compensations whatever earned, collected and uncollected, etc.

Article 3898, as amended, reads:

"The fiscal year, within the meaning of this act shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make the final settlement required in this act not later than February 1st of each year;...."

The above provisions are mandatory on the part of the tax collector and his office and are performable without any additional allowance of compensation over and above the maximum salary allowed or authorized by statute. The above order cannot be construed otherwise than an unauthorized allowance of compensation for such duties above set forth. The purpose of the statutes prescribing the maximum amounts being to exclude from the Commissioners' Court the power to make a greater allowance than that authorized and fixed under the Officers' Salary Bill. The duty shown in the order being primarily for

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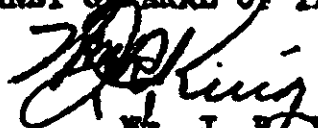
which the salary of the office is paid, Article 100, 101 and 101a of Vernon's Annotated Penal Code, 1925, makes it a penal offense for the tax collector to fail to perform such duties. We do not think the Constitution or the statutes authorize extra compensation or place a premium on such duties required to be performed and at the same time make it a penal offense for failure to perform same.

It is, therefore, the opinion of this Department that the Commissioners' Court is unauthorized to make an allowance of any sum to the ex-tax collector for men to check out and make the final reports of his office.

Very truly yours

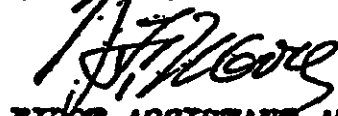
ATTORNEY GENERAL OF TEXAS

By


Wm. J. King
Assistant

WmK:AW

APPROVED:



FIRST ASSISTANT ATTORNEY GENERAL